

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Define)	RM No. 10522
“Captured” and “New” Subscriber Lines)	
for Purposes of Receiving Universal)		
Service Support Pursuant to 47 C.F.R. §)	
54.307 et seq.)	

COMMENTS OF THE ALLIANCE OF RURAL CMRS CARRIERS

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TABLE OF CONTENTS

I.	Executive Summary	2
II.	NTCA Seeks to Reverse What its Members Agreed to in the RTF Process	3
III.	The Rules Proposed by NTCA Contravene Congressional Mandate, the Joint Board’s Recommendation, and the FCC’s Rules.....	6
II	The Existing Rule is Unambiguous and the FCC’s Implementation is Essential to Fostering Universal Service Goals.....	6
B.	Why NTCA’s Petition is Anticompetitive.....	9
IV.	NTCA’s Proposal is Not Competitively Neutral	10
V.	The Current System Does Not Provide Excess Support to CETCs	12
VI.	The Issues of Raised by NTCA Are Best Resolved Through the Joint Board and RTF Processes.....	14
VII.	NTCA’s Purported Concerns About Growth of the High-Cost Fund Are Disingenuous	17
VIII.	The Benefits that CETCs Are Already Bringing to Rural America Foreshadow What is to Come.....	18
IX.	Monopolies Disserve the Public	20
X.	Conclusion	22

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The Alliance of Rural CMRS Carriers (“ARC”) by its counsel and pursuant to the Commission’s *Public Notice* and *Order*, hereby submits the following comments in the above-captioned proceeding.¹

¹ National Telecommunications Cooperative Association Petition for Expedited Rulemaking (filed July 26, 2002); *see* Public Notice, Report No. 2567 (Cons. & Govt. Aff’s Bur. rel. Aug. 8, 2002). The deadline for filing comments was extended by *Order*, DA 02-2214 (WCB rel. Sept. 9, 2002).

ARC include wireless carriers that have either obtained eligible telecommunications carrier (“ETC”) status under 47 U.S.C. § 214 and the Commission’s rules contained in 47 C.F.R. § 54.101 *et seq.*, or have pending applications to obtain ETC status at various state public service commissions or before the FCC.² Each of these carriers has relevant experience with the process of obtaining ETC status and redefining incumbent local exchange carrier (“ILEC”) service areas, and is familiar with the process pursuant to which ILECs are permitted to disaggregate high-cost support. As such, ARC’s member companies are well qualified to provide comment on NTCA’s petition.

1. Executive Summary.

NTCA’s proposed rule change is part of a broad strategy to eliminate competition from competitive ETCs (“CETCs”) before they can receive sufficient high-cost support to demonstrate the public benefits of funding competitive networks in high-cost areas, and before CETCs make any significant inroads in ILEC monopolies. NTCA has timed its petition well — most CETCs have just begun receiving high-cost funding, and as a result they have had little opportunity to build new infrastructure and offer customers a higher quality service that can compete with ILECs. A summary of these comments follows:

- NTCA seeks to reverse what the ILEC industry agreed to several years ago in the Rural Task Force (“RTF”) process that recommended adoption of the FCC’s current rules providing for portability of support to CETCs.
- Adoption of NTCA’s proposed rule change is contrary to the letter of Sections 214 and 254 of the Act and Part 54 of the Commission’s rules, which mandate

² ARC’s membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., Highland Cellular, Inc., Midwest Wireless Communications, LLC, N.E. Colorado Cellular, Inc., Rural Cellular Corporation, RFB Cellular, Inc., and Virginia Cellular, LLC.

that high-cost support for CETCs be made available and that such support be sufficient.

- Portability of support, a foundation of the Commission's high-cost support rules, will disappear if NTCA's proposal is adopted.
- NTCA's proposal would wipe out support to CETCs and ensure that they will never receive sufficient support to enable them to construct a network which can compete with wireline facilities in rural areas in both service and price.
- Because of the need for large capital expenditures up front to improve rural networks, the "per-line" system under funds virtually all CETCs at the outset. The issue of support for CETCs going forward is best addressed within the comprehensive CC Docket No. 96-45 proceeding.
- NTCA's concern about increases in the high cost fund due to competitive entry must be put in perspective: NTCA members have opposed all attempts to cap or limit the high-cost support mechanism.³ Moreover, NTCA remains a leader in lobbying the FCC and Congress to raise or eliminate the cap on high-cost funding and otherwise guarantee "sufficient" support to rural ILECs.⁴
- There are many rural areas where landline facilities would not exist today but for the universal service support program. Likewise, no wireless carrier will construct facilities which a customer can substitute for wireline service without sufficient high-cost support.
- Providing high-cost support to CETCs is potentially the most efficient means of advancing broadband deployment in rural areas.

³ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000).

⁴ See, e.g., NTCA Press Release, "Deal Introduces Bill to Repeal Universal Service Cap" (March 23, 2001), at www.ntca.org/press/releases/pr_032301.html; Federal-State Joint Board on Universal Service, CC Docket No. 96-45, NTCA Initial Comments at p. 9 (filed Apr. 10, 2002) (cautioning against any changes to the Commission's universal service rules that would deprive rural ILECs of "their right to recover their investments.")

II. NTCA Seeks to Reverse What its Members Agreed to in the RTF Process.

Following the adoption of the FCC's *First Report and Order* in May 1997,⁵ the Joint Board convened the RTF, which began a series of conferences and meetings to work through many issues relating to the provision of universal service support to rural ILECs and competitive ETCs.⁶ ILECs participated in the RTF process, which produced six white papers and a final report to the Joint Board containing recommendations reached by a consensus of the participants.⁷ The Joint Board, in turn, delivered a *Recommended Decision* to the FCC,⁸ and the Commission released its *Fourteenth Report and Order* in May 2001.⁹

Since the RTF was comprised of ILECs, competitive carriers, wireless competitors, state and federal regulators, and consumers, the process of reaching consensus required compromise. Although many issues were potentially controversial, the RTF described the deliberations

⁵ *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776 (1997) ("*First Report and Order*") (subsequent history omitted).

⁶ *See Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force, Public Notice*, 12 FCC Rcd 15752 (Jt. Bd. 1997); *Federal-State Joint Board on Universal Service Announces Rural Task Force Members, Public Notice*, FCC 98J-1 (Jt. Bd. 1998).

⁷ *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 00-J4 (Sept. 29, 2000) ("*RTF Recommendation*").

⁸ *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87 (1996) ("*Joint Board Recommended Decision*").

⁹ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11294 (2001) ("*Fourteenth Report and Order*"), *recon. denied*, FCC 02-171 (rel. June 13, 2002); *Order and Second Order on Reconsideration*, FCC 02-181 (rel. June 13, 2002).

resulting in the *RTF Recommendation* as “an open, collegial process” involving “consensus rather than hard votes around alternative positions.”¹⁰ One of the many compromises reached through this consensual process allowed rural ILECs to continue to receive high-cost support based on a modified embedded cost system rather than a forward-looking cost model, and to benefit from a large increase in their support amounts. In exchange, CETCs would obtain portability of support, that is, they would receive support in rural areas in an amount equal to the “per line” support paid to ILECs.

¹⁰ *RTF Recommendation* at p. 6.

With the benefit of hindsight, it is now apparent just how valuable the decision to employ a modified embedded cost formula for at least five more years is to ILECs. The entire concept of analyzing ILEC costs based on embedded costs is now being discredited. In the recent *Verizon* decision, the Supreme Court upheld the FCC's rules requiring that ILEC unbundled network elements be priced on a forward-looking cost basis.¹¹ The Court emphasized that the Act represents "an explicit disavowal of the familiar public-utility model of rate regulation" in favor of providing incentives for prospective entrants to overcome the "almost insurmountable competitive advantage" enjoyed by incumbents by virtue of their control of local exchanges.¹²

One consequence of the decision to base high-cost support on the modified embedded cost system¹³ is that ILEC network inefficiencies will be allowed to continue unabated.¹⁴ Yet, for NTCA, that's not enough. Much like the regional bell operating companies ("RBOCs"), who endorsed the legislative compromises leading up to the 1996 Act only to fight the FCC's implementation of those same provisions, rural ILECs understood full well the compromises made in the legislative and the RTF processes; yet they now seek to litigate the very rules they

¹¹ *Verizon Communications v. FCC*, 122 S.Ct. 1646 (2002).

¹² *Verizon*, 122 S.Ct. at 1661-62.

¹³ *See Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11256.

¹⁴ *See Joint Board Recommended Decision*, *supra*, 12 FCC Rcd at 231-32.

helped to adopt. Since support paid to competitors does not reduce the support paid to ILECs, this attempt by NTCA to quash competition is audacious.

The Commission is moving toward a system where all ILEC support is made explicit and portable.¹⁵ NTCA appears to take the position that its members never agreed to portability for existing customers of competitive carriers. This is nothing more than a *post hoc* rationalization to begin the process of stifling competition through the political process.

III. The Rules Proposed by NTCA Contravene Congressional Mandate, the Joint Board's Recommendation, and the FCC's Rules.

NTCA's proposal would all but eliminate support to CETCs and make it impossible for CETCs to ever invest enough in rural infrastructure to challenge ILEC monopolies. Far from receiving windfall support, most CETCs are currently receiving far less support under the "per-line" system than they would if they were being paid on their own costs, or if all implicit support currently available to ILECs were made available to CETCs. As explained below, the Commission has adopted ample protections to ensure ILECs will not suffer shortfalls in support during the transition to a more rational, transparent system of universal service subsidies. To eliminate virtually all high-cost support currently available to CETCs, while maintaining these protections for ILECs, would defeat the intent of Congress and the Commission to promote competition and extend basic service to all Americans.

A. The Existing Rule is Unambiguous and the FCC's Implementation is Essential to Fostering Universal Service Goals.

¹⁵ See *First Report and Order*, *supra*, 12 FCC Rcd at 8786-88.

NTCA requests amendments to Sections 54.5 and 54.307 of the rules, 47 C.F.R. §§ 54.5, 54.307. In NTCA's view, CETCs should only be paid when a customer cuts the cord with its ILEC or when a customer who has never had phone service before signs up with a competitive carrier. In addition, NTCA requests a cumbersome administrative procedure to be set up to prevent so-called "duplicative support" which would beset the FCC with investigative proceedings, initiated by carriers, to make support determinations on individual subscribers.¹⁶ NTCA wants the high-cost system to support every one of its lines and only a few lines of a competitor. Holding aside that NTCA's proposal violates the FCC's competitive neutrality principle (discussed below), it evidences a fundamental attempt to frustrate the essential purposes of the universal service system.

In adopting rules implementing its Congressional mandate, the FCC properly provided inducements for competitive carriers to request ETC status, such as for example, portability of support,¹⁷ payment on all lines in a high-cost area,¹⁸ and disaggregation of support.¹⁹ Section 54.307(a)(1), the key rule on portability of high-cost support, could not be more clear:

¹⁶ It is precisely this type of regulatory quagmire that the RTF warned of in its White Paper 5 at p.18 (dealing with "captured" and "new" lines may create administrative problems and the need to track customers from one ETC to another.")

¹⁷ See 47 C.F.R. § 54.307(a).

¹⁸ See 47 C.F.R. § 54.307(a)(1).

A competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in §54.5 of this chapter, shall receive support *for each line it serves* in a particular service area based on the support the incumbent LEC would receive for each such line. (Emphasis added.)

Moreover, Section 54.307(b) states in pertinent part that “[I]n order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier *must report* to the Administrator the number of working loops it serves in a service area serving a rural LEC service area....” (Emphasis added.) Neither of these very specific rules evidences any uncertainty about how a CETC receives support or what is required to be reported to USAC for the support to be calculated and disbursed.

The FCC has consistently interpreted the rule to require payment of high-cost support on all lines, even second lines. In its *First Report and Order*, the Commission ruled:

¹⁹ See 47 C.F.R. § 54.315.

We do not adopt, at this time, a rule stating that a wireless carrier may receive support only if the wireless carrier is a customer's primary carrier and the customer pays unsubsidized rates for its wireline service....[I]n light of our decision above that, under the modified existing high cost mechanism all business and residential connections will be supported, we conclude that such a rule is not necessary at this time.²⁰

In October 2001, the Commission reaffirmed, stating:

Although petitioners allege that competition may erode their customer base forcing higher rates to remaining customers, such a result is highly speculative. We have no reason to believe that a significant number of consumers will terminate their wireline service as a result of Western Wireless' designation as an ETC....In addition, the *federal universal service mechanisms support all lines served by eligible carriers in high-cost and rural areas*. Thus, to the extent that the competitive ETC provides new lines to customers that are currently unserved *or second lines to customers that have service*, there will be no reduction in support to the incumbent carrier. (Emphasis added.)²¹

²⁰ *First Report and Order, supra*, 12 FCC Rcd at 8859.

²¹ *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration*, 16 FCC Rcd 19144, 19152 (2001).

Far from being a “loophole”, full portability of support to a CETC is central to the Commission’s efforts to drive infrastructure investment in rural areas and ensure competitive choices for consumers, in furtherance of the universal service goals set forth by Congress. The essential advantage that ILECs have in rural areas is their embedded network that serves most of the population and facilitates their monopoly position.²² That monopoly cannot be broken unless support is provided to a CETC so that sufficient infrastructure can be built so as to provide rural consumers with a legitimate choice of carriers and at prices similar to those available to urban consumers.

B. Why NTCA’s Petition is Anticompetitive.

Both Congress and the Commission fully understand that a central goal of the universal service program is to foster consumer choice in our nation’s rural areas and level the playing field between competitors. Indeed, it would be absurd for Congress and the FCC to set up a system for designating and funding CETCs unless they intended for them to receive an appropriate level of support. As discussed above, the Commission has determined that all lines in

²² The Commission’s most recent report on the state of local competition reveals the extent to which rural ILECs dominate their respective markets. The percentage of zip codes having no alternatives to ILEC service is highest in largely rural states such as Arkansas (89%), Montana (96%) and West Virginia (99%), while a dramatically smaller percentage of zip codes lack competition in more urban states such as California (16%), Florida (5%) and Massachusetts (1%). *See Local Competition: Status as of December 31, 2001*, Ind. Analysis Div., Wireline Compet. Bur. (July 2002).

a high-cost area are to be supported so as to induce CETCs to construct infrastructure in rural areas and force ILECs to become more efficient during the transition period leading up to discontinuing the modified embedded cost support mechanism.

NTCA's petition seeks to accomplish three things: (1) cut high-cost support to existing CETCs so severely that no additional facilities could be constructed; (2) completely shut off new carriers from applying for ETC status; and (3) increase pressure on the FCC by portraying it to Congress as not properly administering the universal service support program. The Fifth Circuit could not have been more clear in rejecting ILEC attacks on portability as an attempt to obtain "protection from competition, the very antithesis of the Act....[P]ortability is not only consistent with predictability, but also is dictated by principles of competitive neutrality."²³ NTCA's attack on portability must be rejected.

IV. NTCA's Proposal is Not Competitively Neutral.

Section 254 (b)(7) authorized the Commission to adopt "such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest convenience and necessity and are consistent with this Act."²⁴ Acting pursuant to this provision and following the *Joint Board Recommendation*, the Commission concluded:

Universal service support mechanisms and rules should be competitively neutral... [C]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.²⁵

²³ *Alenco, supra*, 201 F.3d at 622.

²⁴ 47 U.S.C. § 254(b)(7).

²⁵ *First Report and Order, supra*, 12 FCC Rcd at 8801. These principles were affirmed by the Fifth Circuit in *Alenco, supra*, 201 F.3d at 620.

NTCA apparently believes that competitive neutrality dictates that a CETC receives support only when a customer completely cuts the cord from its ILEC, and then only after the CETC goes through a cumbersome regulatory process to confirm eligibility for support.

NTCA's ideal system would place ILECs and CETCs in the following regulatory posture:

NTCA Proposed High-Cost Support Regime	ILEC	CETC
Support paid on all customer lines	Y	N
Support paid if customer takes service from more than one carrier	Y	N
Implicit support available	Y	N
Administratively efficient to obtain support	Y	N
Support immediately available on existing lines	Y	N
Incentive to become more efficient	N	Y

As the above chart demonstrates, NTCA's proposal clearly does not pass muster under the Commission's competitive neutrality principle.

NTCA complains that it is not competitively neutral for ILECs to be subject to substantial regulatory burdens — including equal access — while CETCs are free from the same burdens. However, as NTCA knows, regulation of ILECs serves to neutralize a working monopoly. If a CETC is successful in breaking the ILEC monopoly, the appropriate regulatory response is to lower regulatory burdens placed on ILECs.

With respect to equal access specifically, three key points underscore why placing such a requirement on wireless CETCs is unnecessary. First, ILEC equal access costs were recovered long ago through the universal service support mechanism,²⁶ and no portion of high-cost support

²⁶ Most rural ILECs received a waiver to recover equal access operating expenses during the year in which they were incurred, rather than having to spread out such recovery over an 8-year period. *See NECA Waiver Order*, 3 FCC Rcd 6042 (1988). It is likely that all, or nearly all, rural ILECs completed the process of depreciating (and recovering) any capital expenditures related to equal access several years ago. Accordingly, with very limited

being paid to ILECs today funds equal access.²⁷ Second, CMRS carriers who offer bundled packages to consumers, including roaming, long distance, and extended area calling, are not subject to the interstate access charge regime and have no way of recovering the cost of providing equal access through access charges. If a CMRS carrier is required to offer equal access, there would likely be few takers above basic rate plans. Bundled rate plans that deliver far more value and flexibility will continue to deliver the best value to the customer, who will forgo equal access by choice.

Finally, unless a conversion to equal access is accompanied by a corresponding increase in support for competitive carriers, then tens of millions of dollars which could be directed to

exceptions, rural ILECs' rate bases either include no equal access costs or are mostly finished with depreciating and recovering those costs. In any event, even those rural ILECs that still have equal access costs in their rate bases do not recover any such costs through current high-cost support mechanisms.

²⁷ Because equal access costs, as defined in Part 36 of the Commission's rules, relate exclusively to specific upgrades to switching capabilities, the only type of high-cost support that has any relevance to equal access costs would be local switching support, a support mechanism not available to rural LECs. Moreover, the investment and expense accounts included in local switching support cannot include equal access costs because, prior to calculating support amounts, "equal access investment is first segregated from all other amounts in the primary accounts." 47 C.F.R. § 36.191(b); *see also* 47 C.F.R. § 36.421(b).

construct competitive networks will be spent upgrading switches to deliver equal access. The consumer benefit of better service far outweighs equal access, and diverting funds from the construction of competitive networks would only serve to shield NTCA's members from competition. Equal access is a red herring and should be rejected.

V. The Current System Does Not Provide Excess Support to CETCs.

NTCA complains that it is unfair for a CETC to be paid on an incumbent's costs, claiming that a CETC's costs are lower and therefore windfall support is being provided under the current system. NTCA conveniently ignores the fact that if most CETCs were paid on their own costs, they would be collecting more support than they are under the current program. In almost all instances and for any given area, the CETC has fewer lines than the incumbent over which to spread its costs. Secondly, a CETC is not nearly as far along as an ILEC in constructing its network to provide service throughout its service area. Thus, the initial outlays, to improve network facilities, are much greater at the outset, meaning that CETCs are not obtaining sufficient support to enable them to cover those costs when they begin to carry out their ETC obligations. Third, if a CETC is receiving significant high-cost support in a low-cost area, the fault lies with the ILEC, who has failed to disaggregate support to more accurately target high-cost support and remove it from low-cost areas.²⁸

All of the ARC companies that have actually received support have incurred capital expenditures well in excess of the high-cost funding that they have received to date. Carriers that are receiving high dollar levels of support have committed to serve large areas and the support

²⁸ Roughly 90% of rural ILECs nationwide chose Path 1 on or before May 15, 2002. Those choices, by and large, do not reflect much concern about growth of the high-cost fund, nor a concern that a CETC might receive unjust support in low-cost portions of their service areas.

being received in any one study area is usually far less than the incumbent LEC. The windfall support that NTCA speaks of does not exist. CETCs are counting on the system to provide appropriate levels of support and NTCA should not be permitted to undercut the current system before it gets off the ground.

VI. The Issues of Raised by NTCA Are Best Resolved Through the Joint Board and RTF Processes.

NTCA's proposal goes to the heart of the issues of portability, sufficiency, and competitive neutrality, issues which received comprehensive analysis from the RTF, the Joint Board and the Commission. A brief review of how we got to this point illustrates why changing a single rule to suit ILECs is ill-advised.

For decades, only ILECs received high-cost support, most of it implicit. That is, ILEC support was hidden inside rates and access charges. The 1996 Act directed the FCC to make all subsidies explicit in order to begin the process of making all carriers compete on a level playing field.²⁹ Fundamental to Congress' vision of the universal service support system is the principle

²⁹ See 47 U.S.C. § 254(e); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 16 FCC Rcd 19613, 19617 (2001) ("MAG Order"); *First Report and Order, supra*, 12 FCC Rcd at 8786-87.

that support must be sufficient, so that customers in rural areas have choices in services, service providers and prices that are similar to those in urban areas.³⁰ Congress also set forth a specific requirement that CETCs be designated in order to encourage competition.³¹

³⁰ 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”)

³¹ *See* 47 U.S.C. § 214(e)(2).

The FCC’s comprehensive CC Docket No. 96-45 proceeding has focused on implementing its Congressional mandate that all support be explicit. This is an enormous task and the Joint Board and the RTF have for six years provided the Commission with a large body of work to develop a new comprehensive universal service mechanism for both rural and non-rural areas.³² Understanding that transitioning the system to provide explicit support based on forward-looking costs must be done gradually to avoid rate shocks and other adverse effects to ILECs, the Commission has moved carefully, and has included various mechanisms such as the “safety valve” and “hold harmless support” to ensure that ILECs maintain appropriate support levels and customers maintain service during the transition period.³³

In fact, it can be fairly stated that ILECs have fared very well under the current system. Many rural carriers, who have not upgraded plant for many years, received an increase in support and obtained the modified embedded cost formula for at least five years, as a result of the Commission’s *Fourteenth Report and Order*. In areas where no CETC is designated, ILECs are free to do anything they like — whether to construct advanced networks or simply to sit back

³² See, e.g., *Joint Board Recommended Decision*, *supra*; *RTF Recommendation*, *supra*.

³³ See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11284-85; *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432, 20474 (1999).

and clip coupons — with the support they are guaranteed to receive under the current system. Worse, there appears to be no accountability by ILECs as to their use of high-cost support.

As the Commission stated in its *Fourteenth Report and Order*, the Joint Board's next task will be to develop recommendations for the Commission to improve its universal service mechanism going forward.

Consistent with the Joint Board's recommendation and in the context of the Joint Board's consideration of an appropriate high-cost mechanism for rural telephone companies, we anticipate conducting a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers as a whole to ensure that both mechanisms function efficiently and in a coordinated fashion. We will use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural telephone companies....we would include in that comprehensive review consideration of general issues related to excessive fund growth and competitive neutrality.³⁴

By its Petition, NTCA seeks to frustrate the deliberative process envisioned by Congress and the Commission. Essentially, NTCA now requests the Commission to undo all of its prior work at the stroke of a pen, ensuring that its system for providing universal service only provides support to ILECs. NTCA's main concern is that CETCs will make real progress during the transitional period to cut into their monopoly service. Until wireless carriers have an opportunity to demonstrate the benefits that can accrue to rural America as a result of their ability to drive infrastructure investment, it is grossly premature to end the current system. The issue of providing high-cost support to rural areas is one which is properly dealt with in a thoughtful and

³⁴ See *Fourteenth Report and Order*, *supra*, 16 FCC Rcd at 11310.

comprehensive manner. NTCA's proposal to carve out a single rule to serve its members' collective competitive advantage must be rejected.

VII. NTCA's Purported Concerns About Growth of the High-Cost Fund Are Disingenuous.

Wireless ETCs in the aggregate will receive approximately \$50 million in funding in 2002, which a small fraction of the total spent on high-cost support.³⁵ Certainly, the growth rate funds paid to wireless ETCs has been high — considering the starting point was zero. The percentage of support garnered by CETCs is even lower if one includes the substantial amount of implicit high-cost support ILECs still receive. As more support converts from implicit to explicit, the fund will necessarily increase, such as for example, the recently-created Interstate Common Line Support mechanism.³⁶

³⁵ ARC notes that the McLean & Brown white paper cited by NTCA erroneously includes a number of carriers, including three ARC member companies, who are not ETCs and are not expected to receive any funds in 2002. Moreover, it significantly overstates the amount of annual support that some carriers are to receive because the support levels shown include areas where the carrier is not yet receiving support, and may not if ETC applications or service area redefinition proceedings cannot be successfully concluded. For a more detailed review of the many shortcomings contained in the McLean & Brown analysis, see the written *ex parte* submission filed on September 20, 2002 in CC Docket No. 96-45 (Petitions for Designation as an ETC in the State of Alabama Filed By Cellular South Licenses, Inc. and RCC Holdings, Inc.).

³⁶ See *MAG Order, supra*, 16 FCC Rcd at 19667-68 (2001).

ILECs have consistently opposed any caps on their support levels,³⁷ have fought the transition to a forward-looking cost methodology,³⁸ and have received other special “safety valves”, “safety nets” and “hold harmless” provisions to ensure that they are not shortchanged a dime of embedded support.³⁹ Yet when the fund increases fractionally as a result of competitive ETCs doing exactly what the FCC has encouraged them to do, a petition for rulemaking is filed seeking to lock out competition.

NTCA seeks to focus on the size of the fund and its growth rate, while diverting attention from the real benefit that making support explicit has had on rural America: access charge rates and other implicit forms of support are being wrung out of the system. If the Commission succeeds in its task the high-cost fund will increase, implicit payments made by consumers will be removed, customers will pay market-based rates and everyone will be able to make a fair assessment of the amount of support being paid to all ETCs.

VIII. The Benefits that CETCs Are Already Bringing to Rural America Foreshadow What is to Come.

As noted above, NTCA has timed its petition well. Most ARC member companies either do not yet have ETC status (many are being held up by fierce ILEC opposition) or have not had

³⁷ See *Alenco, supra*, 201 F.3d at 618.

³⁸ See *First Report and Order, supra*, 12 FCC Rcd at 8900.

³⁹ See 47 C.F.R. §§ 36.605, 54.305, 54.311.

ETC status long enough to demonstrate long-term benefits that the program can bring. Even in its infancy, however, competition has real benefits that can be demonstrated.

Health and Safety Benefits

The health and safety benefits of new system construction cannot be understated. Access to 911 is a core component of the universal service program and ILECs can only deliver it from points located at the ends of their lines. Wireless carriers can advance the vital goal of expanding customer access to 911 and other emergency services only if sufficient facilities exist to complete 911 calls. Switch and base station upgrades required to comply with a wireless carrier's ability to meet its E-911 mandates are patently useless if the carrier does not have enough facilities in place to permit a customer to complete the call. Rural customers rightfully deserve wireless 911 in rural areas that is comparable to that available today in urban areas.

This problem is not confined to Native American lands, which have traditionally had by far the worst telephone service. It extends to virtually every remote area in the country. For every new cell site constructed as a result of high-cost support being provided, more people will complete 911 calls and countless other important health and safety calls will be completed as well. The Commission's contribution to public health and safety through the high-cost support mechanism is vital.

New Construction

New construction is underway. CETCs which have begun receiving support are purchasing infrastructure equipment and installing it in high-cost areas. Customers in remote areas are for the first time receiving high quality RF that permits them to use wireless not as a convenience that works only in some areas, but as a tool they can depend on where they work,

live and play. In response, ARC companies have noticed that ILECs have begun investing in new equipment so as to improve their customer offerings. Since ILECs are being paid on embedded costs, it is only appropriate that they use their excess support to improve their networks to be ready for the day when forward-looking costs are the norm. Again, the customer benefits.

Prices are coming down. In response to some ARC member companies getting ETC status, ILECs have lowered prices. In one case, a \$5.00 monthly “access fee” for interexchange services was dropped in response to the CETC’s offer of an unlimited ten-cent long distance rate. In the short term, monopoly pricing practices in unregulated areas will come under attack, to the consumer’s benefit.

Broadband Deployment

The high-cost program is potentially the most effective way to drive broadband deployment in rural areas.⁴⁰ When a CETC offers high-speed wireless access, an ILEC should respond by speeding the deployment of wireline services that provide customers with many benefits that they do not now have, and some benefits, such as high speed wireline services that wireless carriers may not be able to provide. The result will be customer choice of a broad range of broadband services in a competitive environment throughout virtually every part of this country.

In absolute terms, the strides made thus far seem incremental. This is because ARC companies who have obtained support have had it for less than a year — not nearly enough time

⁴⁰ This is consistent with the Congressional mandate that rural consumers be given access to “telecommunications and information services, including...advanced telecommunications and information services” that are reasonably comparable to those available in urban areas, and at reasonably comparable rates. 47 U.S.C. §254(b)(3).

to purchase and install equipment, market new services, and demonstrate the benefits of that new investment. Soon, however, it will be apparent that the FCC's decision to encourage CETCs to enter high-cost areas, and state PUC decisions to grant ETC status, will result in economic development and competitive advantages accruing to rural areas throughout the nation.

IX. Monopolies Disserve the Public.

In the end, rural consumers would be harmed by NTCA's proposal. CETCs are fulfilling the goals that Congress and the FCC have set out. People living in rural areas deserve better service and a choice of quality service. For every story that NTCA touts in its lobbying campaign about a company constructing fiber to a rural area, there are areas such as rural Arizona and New Mexico, where the telephone system often fails when the phone lines get wet. At a more personal level, the story of Kay Taylor illustrates how directly the lack of choice of communications service can affect one's life.⁴¹

Ms. Taylor lives in a remote area of Washington, where only spotty cellular service is available. No ILEC has strung a line to her house, and no wireless ETC was designated for her area until June of 2002, and that carrier is not yet receiving high-cost support. After requesting service from the Washington Commission many months ago, she has been waiting while the ILEC fights an administrative hearing in the state, ostensibly to determine whether it is reasonable for the state to subsidize expensive line extensions.⁴² The case is scheduled to be tried

⁴¹ See *The Wenatchee World*, www.wenworld.com/wenw/278420666017373.bsp (September 17, 2002).

⁴² See, Docket No. UT-011439 (Washington Utilities and Transportation Commission).

in January of 2003. The ILEC has refused to string a line to her house, despite a state support mechanism that enables the carrier to recover its costs.

Just a few weeks ago, Ms. Taylor's father-in-law had a heart attack and died. Using the available cellular phones, Ms. Taylor was not able to connect with a 911 operator on a timely basis. Unfortunately, her house was so far from a cell site that reliable service could not be obtained. Of course, to Ms. Taylor it was preferable to no service from the ILEC.

Had a wireless CETC been receiving federal universal service funds in that area, and had Ms. Taylor requested service, the carrier could have constructed a repeater to the Taylor residence and provided first-rate communications service, along with appropriate 911 connectivity. But unlike people living in more urban areas, Ms. Taylor's choice of service provider is illusory.

Although nobody can say for certain whether this gentleman's life could have been saved, it is clear that only through the introduction of CETCs into these areas will customers receive improved service and 911 connectivity. Urban consumers can choose the carrier which provides the best coverage, services and prices, while many rural customers cannot simply because real choices do not exist. NTCA's petition will harm rural consumers, plain and simple. Its members oppose ETC designations across the country even though their support will not be reduced as a result of competitive entry. The Commission should summarily reject NTCA's petition and convene the Joint Board to work toward establishing a comprehensive framework for rural universal service support following expiration of the current transition period — a framework that protects the interests of rural consumers, not the profits of rural ILECs.

X. Conclusion.

The rule requiring high-cost support to be paid on all lines is slowly having its intended effect — providing an incentive for competitive carriers to take on ETC obligations. Under NTCA’s proposal, virtually no new infrastructure will be deployed to rural areas, and there will be no reason for a competitive carrier to even consider undertaking ETC obligations. Most, if not all, CETCs receive less support under the current system than if they were paid on their own costs. CETCs are willing to take the risk that future high-cost funding will support networks that can now be constructed only as a result of high-cost support being provided.⁴³ The challenge is to grow the benefits to rural America by improving the current system, not by retreating so as to doom rural customers to monopoly service into perpetuity. Accordingly, NTCA’s Petition should be denied.

Respectfully submitted,

Alliance of Rural CMRS Carriers

By: _____/s/_____
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⁴³ Many CETCs have unfortunately been forced to forego applying for state high-cost funds, simply because many states commissions, influenced by the ILEC’s asserting their imminent demise, have signaled that the process of obtaining state high-cost benefits will be longer and more uncertain. Accordingly, CETCs have often decided to get started and come back to the state process when it is more developed and the process for obtaining high-cost support more certain.

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September 23, 2002

CERTIFICATE OF SERVICE

I, Daniel O. Ladmirault, hereby certify that I have, on this 23rd day of September, 2002, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments filed today to the following:

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